



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/n04,158	06/27/2000	Steven M. Bessette	45112-085	5507

7590

12/31/2002

McDermott Will & Emery  
600 13th Street NW  
Washington, DC 20005-3096

EXAMINER

PATTEN, PATRICIA A

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 12/31/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/604,158

Applicant(s)

Bessette, S.M.

Examiner

Patricia Patten

Art Unit

1654



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 11, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 7, 11-13, and 16-33 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1, 7, 11-13, and 16-33 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO 413) Paper No(s).
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO 152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6) ☐ Other:

Art Unit: 1654

## DETAILED ACTION

### *Election/Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 and 11, drawn to a composition comprising anisic aldehyde and thyme oil for example and a method for controlling dust mites with said composition, classified in class 426, subclass 651 for example.
- II. Claims 7 and 12, drawn to a composition comprising anisic aldehyde and methyl ionone for example, and a method for controlling dust mites with said composition, classified in class 422, subclass 36 for example.
- III. Claims 13 and 33, drawn to a composition comprising dimethyl salicylate and vanillin for example and a method for controlling dust mites with said composition, classified in class 424, subclass 55 for example.
- IV. Claims 16 and 17, drawn to a composition comprising alpha-terpineol, eugenol, cinnamic alcohol, benzyl acetate, phenyl ethyl alcohol and benzyl alcohol and a method for controlling dust mites with said composition, classified in class 424, subclass 725 for example.

Art Unit: 1654

- V. Claims 18-25, drawn to a composition comprising Microcel E,  $\text{NaHCO}_3$ ,  $\text{CaCO}_3$ , benzyl alcohol, alpha-terpineol, phenyl ethyl alcohol, phenyl ethyl propionate and eugenol and a method for controlling dust mites with said composition classified in class 502 , subclass 412 for example.
- VI. Claims 26-28, drawn to a composition comprising  $\text{NaHCO}_3$ ,  $\text{CaCO}_3$ , diatomaceous earth, Hi Sil 233, S-1080, benzyl alcohol, phenethyl propionate and eugenol and a method for controlling dust mites with said composition, classified in class 536, subclass 65 for example.
- VII. Claims 29 and 30, drawn to a composition comprising piperonyl butoxide, benzyl alcohol, phenyl ethyl propionate and thymol and a method for controlling dust mites with said composition, classified in class 514, subclass 67 for example.
- VIII. Claims 31 and 32, drawn to a composition comprising benzyl alcohol, phenyl ethyl propionate and thymol and a method for controlling dust mites with said composition, classified in class 514, subclass 742 for example.

The inventions are distinct, each from the other because of the following reasons:

Art Unit: 1654

Inventions I-VIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, each Group contains different constituents thereby giving each Group separate utility in the art. For example, in Group I is a composition which can be selected from two or more of a large Markush group of ingredients. This composition could be vanillin and thyme oil for example. This composition could be used topically to lighten skin. The composition of Group II could be a composition comprising eugenol and carveol which is different from any of the other Group of inventions. This composition could be used for topical treatment of fungal infections. The composition of Group III could be a composition comprising menthol and pennyroyal oil which is different from any of the other Group of inventions. This composition could be used as a flea repellant. The composition of Group IV contains alpha-terpineol which is not found in any of Group I-III inventions. This composition could be used as a surface antibacterial agent.

The composition of Group V comprises Microcel E,  $\text{NaHCO}_3$  and  $\text{CaCO}_3$  which are not found in any of Group I-IV or VII-VIII inventions. They are further distinguished from the composition of Groups VI in that Group V does not contain constituents such as Hi Sil 233, diatomaceous earth and S-1080 which renders Groups V and VI patentably distinct inventions.

Art Unit: 1654

Groups VII-VIII are also patentably distinct from each other as well as the other Groups. Groups VII and VIII employ different constituents which have respective utilities and would thus provide for a different effect.

Therefore, the Groups are properly restrictable. The search for each of the above inventions is not co-extensive *particularly with regard to the non-patented literature search*. Further, a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group.

Because these inventions are distinct for the reasons given above and the search required for each Group is not required for the others, restriction for examination purposes as indicated is proper. A telephone call was not made to the Attorney due to the complexity of the Restriction requirement. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

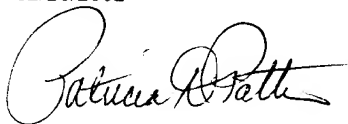
Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

Art Unit: 1654

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Brenda Brumback is on 703-306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

12/26/2002

A handwritten signature in cursive script, appearing to read "Patricia Patten", with a long horizontal flourish extending to the right.

Patricia Patten